



Patent Application
Attorney Docket No. 027966-0311351
Pre-Appeal Brief Request for Review

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S) : Randall B. METCALF CONFIRMATION No.: 6301
SERIAL NUMBER : 10/705,861 EXAMINER : M. T. Fletcher
FILING DATE : November 13, 2003 ART UNIT : 2837
FOR : SOUND SYSTEM AND METHOD FOR CREATING A SOUND EVENT BASED ON
A MODELED SOUND FIELD

Mail Stop Appeal

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pre-Appeal Brief Request for Review

Sir:

In response to the Final Office Action mailed December 29, 2005 (hereinafter "the 12/29/2005 Office Action"), Applicant requests review of the final rejection in the above-identified application. This request is being concurrently filed with a Notice of Appeal. The review is requested for the reasons provided in the **Remarks** beginning on page 2 of this paper. A total of 4 pages are provided.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 033975 (**Ref. No. 027966-0311351**).

Remarks

Claims 25-47 are all of the claims pending in this application, currently stand rejected. In view of the following remarks, reconsideration and allowance of all the claims pending in the application is requested.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 25-47 under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 6,608,903 to Miyazaki et al. (hereinafter "Miyazaki") in view of U.S. Patent No. 5,809,153 to Aylward et al. (hereinafter "Aylward"). Applicants traverse this rejection as being improper at least because the Examiner has failed to establish a *prima facie* case of obviousness. For example, (1) the cited references do not teach or suggest all of the features of the claimed invention, and (2) there is no proper motivation or suggestion to combine Miyazaki and Aylward.

1. Miyazaki and Aylward do not teach or suggest all of the features of the claimed invention.

Claim 25 recites, *inter alia*, "M transducers, arranged to at least partially surround an equivalent sound source, for emitting the modified sound field, the M transducers being oriented away from the equivalent sound source so as to emit the modified sound field outwardly from the equivalent sound source." Similarly, claim 37 recites *inter alia* "emitting the modified sound field using M transducers that are arranged to at least partially surround an equivalent sound source, the M transducers being oriented away from the equivalent sound source so as to emit the modified sound field outwardly from the equivalent sound source." Miyazaki and Aylward fail to teach or suggest at least these features of the claimed invention.

The Examiner acknowledges that Miyazaki does not teach "M transducers being oriented away from the equivalent sound source to emit the modified sound filed [sic] outwardly from the equivalent sound source." See, the 12/29/2005 Office Action at page 3. The Examiner relies on Aylward for this feature, however, and asserts that the configuration of transducers shown in figures 1-4, 6A, 7, and 8 of Aylward is analogous

to the claimed feature. See, *id.* The Examiner's interpretation of these figures is not supported by the disclosure of Aylward. Instead of using the depicted transducers to emit a sound field outward from an equivalent sound source surrounded by the transducers, Aylward describes using the transducers to create "virtual sources" located outside of the array of transducers. See, Aylward at col. 4, lines 3-25, and source at position 13 in FIG. 2. Further, Aylward teaches that these "virtual sources" are created "at locations at which it would be impractical or impossible to physically place a loudspeaker." See, Aylward at col. 4, lines 16-19. Therefore, Aylward does not teach or suggest surrounding an equivalent sound source with a plurality of transducers and emitting a sound field outwardly from the equivalent sound source.

For at least this reason the rejection of claims 25 and 37 is improper and should be withdrawn. Dependent claims 26-36 and 38-47 are allowable over the cited references because they depend from allowable independent claims, as well as for the features they recite.

2. There is no motivation to combine Miyazaki and Aylward.

Assuming *arguendo* that Aylward did properly suggest a plurality of transducers oriented away from an equivalent sound source to emit a modified sound field outwardly from the equivalent sound source, the rejection would still be improper because there is no legally proper motivation or suggestion to combine Miyazaki and Aylward. The Examiner maintains that it would have been obvious to make the proposed combination because "the teachings [of Aylward in combination with the teachings of Miyazaki] allow the sound to be radiated inwardly or outwardly, based on user's desire." See, the 12/29/2005 Office Action at page 3.

The motivation for combining Miyazaki and Alward provided by the Examiner is improper because it focuses on the effects of the proposed combination. In order to properly combine the cited references the Examiner must instead point to a teaching or suggestion in the prior art of the desirability for combining the references. See, *In re Sang-Su Lee*, 277 F.3d 1338, 61 U.S.P.Q.2d 1430 (Fed.Cir. 2002) (*citation omitted*).

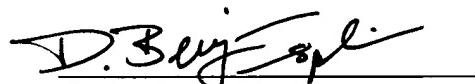
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Since the Examiner has failed to demonstrate such a suggestion in the prior art, the combination of Miyazaki and Aylward is improper.

For at least this reason the rejection of claims 25-47 based on the combination of Miyazaki and Aylward is improper and should be withdrawn.

Dated: March 29, 2006

Respectfully submitted,



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